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Matthew M. Polka, President

May 22, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: RM Docket No. 10425;
Comments of the American Cable Association**

Dear Ms. Dortch:

On behalf of ACA, I respond to the Petition for Rulemaking and Comments filed by Lawson Associates.¹ The Lawson Petition seeks amendments to Part 11 to authorize a Plan A switch controller option for small cable system EAS compliance. The Lawson Petition describes the option as one that would result "in significant EAS cost saving" and one that would "lower the economic barrier for many small cable systems . . . to participate in EAS."² With this letter, I express ACA's support for the Lawson Petition, and raise questions that should be answered before granting the Petition. I also register ACA's opposition to any requirement that small cable operators be obligated to negotiate with local broadcasters for the use of EAS message slides to communicate emergency messages.

Background

ACA represents the interests of more than 900 independent cable companies. Together, ACA members serve about 7.5 million cable and Internet subscribers, primarily in smaller markets and rural areas in all 50 states and in virtually every congressional district. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller systems and smaller markets. ACA and its predecessor, the Small Cable Business Association, have actively participated in EAS proceedings since 1994.

¹ Petition for Rulemaking, Lawson Associates, RM-10425 (filed March 18, 2002) ("Lawson Petition"); Comments of Lawson Associates, RM-10425 (filed May 20, 2002) ("Lawson Comments").

² Lawson Petition, p. 6.

ACA and its members share a vital interest in EAS implementation. Collectively, ACA members operate well over 5,000 cable systems. More than 1,000 of these systems serve fewer than 1,000 subscribers, and many serve less than 500 subscribers. Imposing on those very small systems the same EAS compliance costs as a system serving nearly 5,000 subscribers would, in the Commission's own words, be "financially ruinous"³ and cause "irreparable harm."⁴

The need for broad small system EAS relief is well established.

Based on our research, current costs for EAS equipment and installation for smaller headends range between \$9,000 and \$13,000. These costs include the benefits of volume discounts obtained through the National Cable Television Co-op. The recently approved decoder-only option may decrease these costs by 15 – 20%. Moreover, these units are reportedly not even in production. Still, if they were, for operators of hundreds and hundreds of very small headends, even these compliance costs will impose an impossible financial burden in 2002. The Lawson Plan may provide relief for a subset of these systems.

As the Commission is well aware, small, rural system cable systems face a tremendous financial squeeze from forces including:

- **Sharply escalating programming costs.** Rates charged to small cable operators for satellite and broadcast programming controlled by media conglomerates like Disney/ABC, GE/NBC, and Fox/News Corp. are continuing to increase well in excess of the rate of inflation.
- **Intense competition from the two national DBS companies.** Smaller, rural cable systems are facing intense competition from national DBS providers, EchoStar and DirecTV. To compete with DBS, small cable systems must invest all available capital in system upgrades necessary to increase channel capacity and offer advanced services. Still, small cable systems have lost, and continue to lose, subscribers to DBS – a competitor with no EAS obligations.

For many small systems, the purchase and installation of costly EAS equipment in 2002 could mean the final turn on the financial vice squeezing these systems.

For these reasons, the Commission has repeatedly stated that it will grant EAS waivers for small systems that can demonstrate financial hardship. Many ACA members are currently seeking financial hardship extensions from the October 2002 EAS compliance deadline. Based on our records, waiver requests covering nearly 1,000 small cable systems are currently on file with the Enforcement Bureau, with more to follow. These filings create a solid record of the scope of the problem in the small cable sector. ACA strongly supports the expeditious processing and granting of those financial hardship waiver requests.

³ *In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd. 1786 (1994), ¶ 115

⁴ *In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Order*, 12 FCC Rcd. 7924 (1997), ¶ 3.

ACA supports the Lawson Petition and encourages the Commission to obtain answers to key questions before granting the Petition.

ACA supports the Lawson Petition along with other proposals for reducing small system EAS compliance burdens.⁵ Any action to extend the October 2002 deadline and to lower costs will enable a number of small systems to ultimately deliver national EAS messages. Still, the adoption of the Lawson proposal should not interfere with the small cable system EAS waiver process. The Commission has assured small cable operators that financial hardship waivers would be available, and repeated that assurance as recently as February 2002.⁶ ACA and its members are looking to the Enforcement Bureau to follow through on this commitment.

In evaluating the Lawson Petition, the Commission should obtain answers to two key questions. First and foremost, how much will it cost? The Lawson Petition does not quantify the potential cost savings of the proposed pass through switch controller option. It would be helpful to have that information, especially in the form of firm commitments to a specific price range by vendors of the system.

Second, we cannot discern from the Lawson Petition exactly when the equipment would be available. The Lawson Petition suggests that the equipment can be available by October 2002,⁷ but it is unclear whether this is based on commitments from manufacturers and vendors. To go from proof of concept to full-scale production and distribution in a few months seems ambitious; any number of factors could delay commercial availability. If the Commission does approve the Lawson plan, for those systems seeking to use the equipment, the Commission should extend the October 2002 deadline until the equipment becomes available in the field.

With these questions answered appropriately, ACA supports expeditious approval of the Lawson Plan.

ACA cannot support a requirement that forces small cable systems to negotiate with broadcasters for use of EAS message slides.

Finally, the Lawson Comments appears to advocate a requirement that small cable operators negotiate with broadcasters for use of an EAS message slide.⁸ We must strongly oppose such an obligation. This would shift additional administrative burdens and transaction costs to small cable operators and would give commercial broadcasters even more leverage in retransmission consent negotiations and other dealings with small cable operators. National security interests should override broadcasters' and programmers' concerns in this area. In approving the Lawson Plan, the Commission should make clear that small cable operators are entitled to select and use without restriction a local broadcast channel as a source for EAS override messages.

⁵ See Supplemental Comments of the American Cable Association, EB Docket No. 01-66 (filed December 20, 2001).

⁶ *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Report and Order*, FCC 02-64 (rel. February 26, 2002), ¶ 73.

⁷ Lawson Petition, p. 10.

⁸ Lawson Comments, p. 1.

In conclusion, ACA appreciates any and all efforts by the Commission to grant small cable system EAS relief, and we support the Lawson Plan as described above.

Yours sincerely,



Matthew M. Polka

cc: Joseph Casey
Christopher C. Cinnamon
Bonnie Gay
Kenneth Lawson

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